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No. 05-1382

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ALBERTO R. GONZALES, Attorney General,

Petitioner,

v.

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF FAITH AND ACTION, INSTITUTE IN BASIC LIFE PRINCIPLES, INTERNATIONAL REAPERS FOUNDATION, THE NATIONAL CLERGY COUNCIL AND ILLINOIS STATE SENATOR DAVID SYVERSON AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI[1]

Faith and Action, Institute in Basic Life Principles, International Reapers Foundation, the National Clergy Council and Illinois State Senator David Syverson join together in this amicus brief in the defense of the sanctity of life and in particular to protect the constitutionality of the federal Partial Birth Abortion Ban Act (PBA Act).

SUMMARY OF ARGUMENT

This Ninth Circuit case and the Eighth circuit case of *Gonzalez v. Carhart*, et l., 05-380 found the PBA Act to be unconstitutional. Amici join hands with petitioner and other Amici in asserting that the PBA Act which prohibits deliberately killing a live baby "outside the body of the mother," 18 U.S.C. § 1531(b)(1)(A), is constitutional. Amici incorporates by reference the statement of facts, principles and argument both in Petitioner's brief and that of other amici that the PBA Act should be sustained as constitutional. This brief does not restate facts or argument previously made.

The core of amici's argument is that this contentious and divisive issue of the barbaric act of abortion must be resolved as a matter of the foundational law which is contained in the Declaration of Independence. The United States Constitution is the document required by the Declaration of Independence to implement and protect the rights established in the Declaration.

The antithesis of that invites manufactured and divisive constitutional interpretations which are often driven by political or personal predilection. A ruling, without a legal foundation of absolutes, and based purely upon fluctuating human reasoning and "wisdom" expands ever wider the

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1. Copies of consents from the parties are being lodged herewith. Counsel for any party did not author this brief in whole or in part. No person or entity except amici or its counsel made any monetary contribution to the preparation or submission of this brief.

religion of "state dictated morals," or "religion" if you will, which our Constitution was designed to prevent.

INTRODUCTION

Failure to base decisions on a firm legal foundation has resulted in opinions dealing with moral issues which are sharply divided. Abortion originated with the split decision in *Roe v. Wade*, 410 U.S. 113, (1973).

The resulting cultural and political division spawned by this issue in the interim has intensified to the point it mirrors the division which existed in this country on the slavery issue in the 1850s. God's law of equality in the Declaration was being violated by the people. That violation was approved and abetted by the United State Supreme Court in the infamous ruling in *Dred Scott v. Sandford*, 60 U.S. (19 Howell.) 393 (1857), which holding was derived solely from human reasoning and not based on any constitutional law. The explosive consequences for that violation of law took this nation into the civil war, the bloodiest and most costly conflict in our history to date, and the stain is still with us.

The same conditions and symptoms are present in our current day society. The question is what is the law that is being violated? The national problem on abortion and other moral issues has been exacerbated by the judiciary's failure over the last sixty years to recognize and address the root cause which now clamors for attention and solution in our culture, the Congress, and the courts of our land. Unless a rational and objective examination is made to identify the root cause and successfully excise it, there are tragic consequences equal to that of the civil war in store for this nation, and its people. That is not an idle prophecy but as this brief will attempt to illustrate, a readily foreseeable and already evident consequence.

Unless one plays the part of one of the classic three monkeys, "see no evil, hear no evil, speak no evil," it is

patently evident that American culture is changing rapidly in the area of social, moral, and legal constraints which only recently were in place and are now breached regularly and with impunity. It is well known, for example, the federal government provides funds for the display of homoerotic photographs that instead of using tax dollars as is currently the case would in the past have attracted the attention of the police.

The evidence demonstrates beyond a reasonable doubt that we are politicizing our culture with resulting damage to institutions and disciplines that once had standards of integrity unrelated to political results. Moral relativism is rampant and contrary to the philosophy of government in our founding documents.

Failure to evaluate and properly address the root cause rather than deal in isolation with the surface problem presented by this case will hazard the continued freedom of the people of this nation and its very survival. The decision in this case must be based upon law not human reasoning absent a legal foundation. Such decisions ultimately result in tyranny.

The question has been raised whether or not, other than *stare decisis*, abortion enjoys any "constitutional protection." It is obvious that the justices wrestle to find a valid answer to the issue aside from their own individual predilections. A window of opportunity lies before this court to determine and unanimously resolve the root issue as a matter of constitutional law and put the confronting problem back in the lap of the people of this republic where it belongs. That is what this brief is about.

ARGUMENT

Justice Scalia's comments in *Stenberg v. Carhart*, 530 U.S. 914, 953 (2000) which appear to echo the absence of a foundation and the need for constitutional law on which to render an opinion stated:

> It (Casey) seemed to me, quite to the contrary, the 'rule fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since;' and that, 'by keeping us in the abortion-umpiring business . . . O'Connor's concurrence that the issue of abortion is one of the most contentious and controversial in contemporary American society persists in the belief that this court, armed with neither constitutional text nor excepted tradition, can resolve that contention in controversy rather than be consumed by it.

While dealing with a First Amendment issue, Justice O'Connor fretted with the same problem of a lack of constitutional absolute in building a decision in *Wallace v. Jafree*, 472 U.S. 38 (1985) when she observed:

> . . . we must strive to do more than erect a constitutional signpost (internal citation) to be followed in any particular case in which our predilections may dictate. Instead our goal should be to frame a *principle for constitutional adjudication* that is not only grounded in the history and language of the First Amendment but one that is also *capable of consistent application* to the relevant problems. (Emphasis supplied)

Justice Kennedy likewise reflected his concern over a lack of constitutional absolute upon which to predicate a decision in *Allegheny v. ACLU*, 492 U.S. 573 (1989):

> Either the endorsement test must invalidate scores of traditional practices recognizing the place religion holds in our culture, or it must be twisted and stretched to avoid inconsistency with practices we know to have been permitted in the past, while condemning similar practices with no greater endorsement affect simply by reason of their lack of historical antecedent. (FN 10)Neither result is acceptable.

Much as in the horrible mistreatment of slaves who were legally relegated to the category of "non-persons" alla *Dred Scott*, the record in the court below describes in cold medical terms procedures followed in aborting a baby in the first and second trimester, let alone in the third term, and narrates the horror with which we are dealing.

Reaction to the horror described in the record is captured in Justice Scalia's dissent in *Stenberg* at 956:

> I am optimistic enough to believe that one day *Steinberg v. Carhart* will be assigned its rightful place in the history of this court's jurisprudence beside *Korematsu* and *Dred Scott.* The method of killing a human child-one cannot even accurately say an entirely unborn human child-proscribed by this statute is so horrible that the most clinical description of it evokes a shudder of revulsion . . . the notion that the Constitution of the United States, designed among other things, 'to establish Justice, insure domestic Tranquility, . . . and secure the Blessings of Liberty to ourselves and our posterity,' prohibits the states from simply banning this visibly brutal means of eliminating our half borne posterity is quite simply observed.

Justice Kennedy, joined by Chief Justice Rehnquist, likewise reacted in their dissent to the horror testified to by the abortionist, Dr. Carhart, as contained in the record at Stenberg at 959:

> Dr. Carhart has observed fetal heartbeat via ultrasound with 'extensive parts of the fetus removed,' testified that mere dismemberment of a limb does not always cause death because he knows of a physician who removed the arm of a fetus only to have the fetus go on, to be born 'as a living child with one arm.[2] (Reference to the record omitted)

Would there be any mystery as to what decision the United States Supreme Court of 1790 would render on those facts; or even the court in *Roe v. Wade*, 410 U.S. 113, (1973).

The Supreme Court's divided opinion in *Roe v. Wade*, at 116,153 *supra*, held the Texas and Georgia statutes criminalizing abortion unconstitutional while acknowledging that those statutes, "typical of those that have been in effect in many states for approximately a century," were unconstitutional. Recognizing their awareness "of the sensitive and emotional nature of the abortion controversy," the court justified its decision stating at 153,154:

> Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the wall in a distrustful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem

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2. The child is still living with only one arm at about the age of six, the result of a determination that "a woman's right to choose" was superior.

> of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation . . . As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.

The majority in *Stenberg* (*ibid* p.920, 921) further justify the procedure in third term abortion on the grounds that American women, absent a ruling permitting abortion, even to the extent of exterminating a live birth, would be "condemned to live lives that lack dignity." Reciting the court's judgment that "*constitutional law*" must govern, the court affirms it has been determined and redetermined "in the course of a generation" that "the Constitution offers basic protection to the woman's right to choose." (Emphasis supplied)

To the contrary, that "generation" of "*stare decisis*" is not law but simple precedent. Only Congress can make law. Federal Constitution Art. I.

It is maintained that God's absolute law was adopted as the "rule of law" in our Declaration of Independence and as such does preclude abortion . . . When that Divine law is aborted, and one is left to human predilections based upon one's own reasoning and evaluation, the ultimate aftermath over a period of time where such rulings are based upon tyrannical state control results in tragic consequences.

The founding decision of this escalating horror of abortion *Roe v. Wade*, 410 US 113, 153, (1973) based upon some slip and slide human reasoning, passed off as constitutional logic, stated:

> The appellee and certain amici argue that the fetus is a person within the language and meaning of the 14th amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life is guaranteed specifically by the amendment. The appellee conceded as much on reargument.

A review of decisions in this area over the last 60 years demonstrates that since the unsupported decision of Roe, even *stare decisis* has not been followed; rather the latitude for permitted abortions has escalated to the point that we are now arguing about whether it is constitutionally justifiable to kill a living person. As a matter of fact if this act is stricken, there will be no statutory restrictions governing abortion.

This Court must not blind itself to the fact that the issues in this case are wed to other constitutional decisions involving moral issues determined by this court. Those controversial decisions stem from the same root cause, a violation of absolutes, and surrender to the moral relativism of our day.

FOUNDING DOCUMENTS-ORGANIC LAW

The documents on which the conclusion is reached that the federal Constitution is legally founded upon are incorporated into the Declaration of Independence and thus constitutes our Rule of Law are set forth in pertinent part in the attached appendix in the order adopted as a basis for our discussion: Appendix A, the Declaration of Independence; Appendix B, Articles of Confederation; Appendix C,

Northwest Ordinance of 1787; Appendix D, United States Constitution. These documents have been recognized in The United States Code as the organic documents of the United States of America.

THE FOUNDATION OF THE CONSTITUTION IS THE DECLARATION OF INDEPENDENCE

The simplicity of our founding documents can be reduced in substance to one sentence: There is a Creator God, and our rights and foundational law come from Him. The purpose of any civil government is to protect and defend those God given rights.

Stare decisis is not law, only precedent. Paraphrasing Sir William Blackstone from his *Commentaries on the Law of England*[3] he states that precedent is the result of the same fact pattern appearing in litigation which had been previously determined and is to be given due weight in reaching a decision. Two reasons are given: the first that it promotes stability and a reasonable expectation in the community of how such a fact pattern will be adjudicated; secondly it requires a judge to be mindful that he is to decide cases "not according to his own private judgment, but according to the known laws and customs of the land." Judges are not to "pronounce a new law but to maintain and expound the old one." (*Ibid*) Blackstone was perhaps accepted as the leading legal scholar at that time. Thomas Jefferson once said that American lawyers used Blackstone with the same dedication and reverence that Muslims used the Koran.[4]

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3. Commentaries on the Law of England Volume I, William Blackstone. University of Chicago press facsimile of the first addition, p. 69.

4. *Writings of Thomas Jefferson*, Albert Bergh, editor-Washington DC: The Thomas Jefferson Memorial Association, 1904, Volume 12, Page 392, to Governor John Tyler on May 26, 1810.

The structure of any government is built upon some foundation of a worldview whether expressed in writing or not.

A friend of mine visited the Ohio State University on a speaking engagement and was taken on a tour of the campus. The guide brought him to the newest building on the campus at that time, the Wexnir Center for the Arts which boasted "post modernist" architectural design. "What is 'post modern' design?" he asked the guide.

The guide rather proudly explained that there were stairways that went no place, pillars that do not support anything, just randomly put together. "The architect's reason," the guide stated, "is that since life is capricious, why should our buildings have any meaning or purpose when life itself has no meaning or purpose?"

From the group of people standing there my friend asked amidst laughter: "Did he do the same with the foundation? Did the foundation have any purpose or design or certain boundaries or certain laws that it had to keep?" We can fool each other at the infrastructure level, but we cannot fool with reality on the foundational level because the foundation will show us whether it can withstand the various elements that attack the foundation.

Some historical documents are listed that develop the irrefutable conclusion that the Declaration of Independence is in fact the United States foundational law and contains our philosophy of government: (1) Declaration and resolution of the first Continental Congress, October 14, 1774; (2) Resolution for independence adopted by the Continental Congress July 2, 1776; (3) Declaration of Independence adopted by the Continental Congress July 4, 1776; (4) Articles of Confederation March 1, 1781; (5) Northwest Ordinance July 13, 1787; (6) Constitution of the United States September 17, 1787.

In a democracy the majority rules by popular vote. In a Republican form of government it is by "rule of law," through duly elected representatives. The founders made clear the reason for the Republic and warned against the disastrous consequences of a democracy.

The passage of the "intolerable acts" in 1774 brought widespread demands for a Congress of all the American colonies. Representatives were sent to a Continental Congress which adopted a resolution on October 14, 1774 that the colonies were entitled to life, liberty, and property, which they had never ceded to any sovereign power. A resolution for independence, a legal document severing any and all legal connection between the Colonies, on the one hand, and Great Britain on the other hand, was adopted by the Continental Congress on July 2, 1776.

Two days later on July 4, 1776 "the Representatives of the United States of America, in General Congress assembled appealing to the Supreme Judge of the World for the rectitude of our intentions . . ." adopted that legal document, the Declaration of Independence.

This official legal action taken by the Congress established a new nation based upon the recognition of the existence of the "Laws of Nature and of Nature's God," [the rule of law], the existence of the Creator, the endowment of all men [all people] with unalienable rights given by the Creator. That legal document contained the precise and binding clause: "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Thus was established the legal philosophy of government of the now established "new nation, the United States of America," which in its founding legal document recognizing the Creator who actually created, not just political hyperbole, all men equal. They were each endowed with unalienable rights that came from the Creator, and man was to submit to

be governed by the immutable laws, not by the fluctuating human reasoning of man. A government was ordained to be built upon that legal platform for the purpose of securing those rights which came from God, and was to be Republican in form.

It is important to remember in the context of this, that the Constitution *did not* create the new nation. It was the document that was to simply govern the new nation according to the requirements established in the Declaration The carefully chosen words in the preamble of the Constitution of the United States committed the purpose of the Constitution to "secure the blessings of liberty to ourselves and our posterity. . . ." The precise phrase, "blessings of liberty" recognized the legal requirement of the Declaration that these "rights of liberty" came from God, not man, and that the formation of this Constitution based upon that legal requirement was to "secure" those rights.

The terms in the Declaration, "deriving their just powers from the consent of the governed," meant that the governing document would construct a Republican form of government to comply with the "contractual" provisions of the Declaration.

The third sentence in the second paragraph of the Declaration is of great legal significance. This new nation, the United States of America, had laid its legal foundation on the philosophy of government which recognized God, His gift of unalienable rights, and that all men were created equal. That constituted the legal philosophy of government, and the legal document yet to be drawn would constitute a Republican form of government to preserve those rights.

If the people determined that "form of government became destructive of those ends," they could institute a new government by "laying a foundation. . . ." consistent with the exegesis of the Declaration. The term "government" is thus modified by the legal requirement of a foundation. This

particular provision further recognized that the Declaration contained the foundational law of this new nation, the United States of America.

Up until July 4, 1776, the soldiers had been fighting for the defense of the "Colonies." The Declaration declared they were now fighting for the United States of America. At General Washington's command, the Declaration was read aloud to the troops and it was now proudly proclaimed as a war for an independent United States of America. A new nation, a new entity had been created and the Declaration set forth the Form of Government for that new nation.

Representatives of the 13 "States" then worked on a "contract document" which would create a coherent means of cooperation between the "States." The Articles of Confederation were thus created by "delegates of the United States of America" "in the year of our Lord one thousand seven hundred seventy seven, and in the Second Year of the Independence of America." They were ratified at the instance of the "Great *Governor* of the World" the "ninth day of July the year of our Lord one thousand seven hundred seventy eight and in the third year of the Independence of America. (Emphasis supplied)

Yet another legal link with the Declaration was forged by the adoption of the Northwest Ordinance in 1787 concerning creating a territory which would thereafter seek to become a state. To become a territory of the United States, its government must comply with the Northwest Ordinance—adopted July 13, 1787 by the United States in Congress assembled—Article Third, providing "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[5] The Ordinance also contains an introductory legal statement, "the fundamental principles of civil and religious liberty, which formed the basis

5. *See Meyer v. United States*, 272 U.S. 52, 174-175 (1926).

whereupon these republics, their laws and constitutions are erected . . . (Art. 5) Provided, the Constitution and government so to be formed *shall be Republican* . . ." (Emphasis supplied). Notice the requirement of a "foundation" on which the Constitution was to be constructed. The imprint of the Declaration is clearly evident in the wording of that ordinance.

The Constitution of the United States was thereafter adopted "the 17th day of September in the year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the 12th. This Constitution was to replace the inept Articles of Confederation and form a "more perfect union." The States then submitted to the terms of the new constitution which now became the governing document required by the Declaration.

Choosing the precise words to be utilized in documents to carry a particular message in those days was an art. Consequently the words chosen in the Preamble of the Constitution, "We the people of the United States . . . do ordain and establish this Constitution *for* the United States of America." The word "for" was chosen specifically because of its legal significance to indicate that this Constitution was the Republican form of government determined by the Declaration to "secure these rights," *i.e.* the rights set out in the Declaration.

Other phrases in the Constitution were selectively used, it is contended, to tie the legal documents of the past into the Constitution. For example In Article VI, the little noticed phrase, ". . . All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under the Constitution as under the Confederation . . ." in accord with the adoption of the Declaration constituted such a valid "engagement." Article IV provided for full faith and credit to "judicial proceedings,"

in every state which would include the recorded judicial record of approving the Declaration, as well as guaranteeing a Republican form of government which was created in the Declaration, and was binding on each.

The original States endorsed the Declaration and every State since has been required to provide a government that is ". . . republican in form and in conformity with the Constitution of the United States and the *principles of the Declaration of Independence* . . ." As late as August 21, 1959, when the State of Hawaii was admitted to the United States, Pub. L. No. 86-3, 73 Stat. 4 (1959) found the Constitution of Hawaii to be ". . . republican in form and in conformity with the Constitution of United States and the principles of the Declaration of Independence . . ." (Emphasis supplied)

Illustrations of enabling acts of territories admitted as States referencing the Declaration state: "[T]he Constitution, shall be Republican, and not repugnant to the Constitution and the principles of the Declaration of Independence." *See* Colorado, [6] Nevada, [7] Nebraska,[8] and Oklahoma.[9]

Justice Douglas in *McGowan v. State of Maryland*, 366 U.S. 420, 81 S. Ct. 1218 (1961).] captured that historical fact in these words:

> The institutions of our society are founded on the belief *that there is an authority higher than the*

6. *The Statutes at Large, Treaties, and Proclamations of the United States Of America*, George P. Sanger, editor (Boston: Little, Brown, & Co., 1866), Vol. XIII, p.33, 38 Congress, session 1, chapter 37, section 4, Colorado enabling act of March 21, 1864

7. *Id.* At Vol. XIII, p.31, Nevada's enabling act of March 21, 1864

8. *Id.* At Vol. XIII, p.48, chapter 59, section 4, Nebraska's enabling act of April 19, 1864

9. The Statutes at Large of the United States Of America (Washington: Government Printing Office, 1907), Vol.XXXIV, Part 1, p.269, 59th Congress, session 1, chapter 3335, section 3, Oklahoma's enabling act of June 16, 1906.

> *authority of the State; that there is a moral law which the State is powerless to alter*; that the individual possesses rights, conferred *by the Creator*, and which government must respect. The Declaration stated the now familiar theme: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.' *And the body of the Constitution as well as the Bill of Rights enshrined those principles*. (Emphasis added)

Former President John Quincy Adams at the Jubilee of the Constitution on April 30, 1839, the 50th anniversary of the inauguration of President Washington stated:

> This act [the Constitution] was the compliment to the Declaration of Independence; founded upon the same principles, carrying them out into practical execution, and formulating with it, one entire system of government . . . the Declaration and Constitution are parts of one consistent whole, founded upon one and the same theory of government, then new, not as a theory, for it had been working itself into the mind of man for many ages, and been especially expounded in the writings of Locke, but had never been adopted by a great nation in practice.[10]

See also the remarks of John Quincy Adams in his famous oration, "The Jubilee of the Constitution;"[11]

Also see the signatories of the Founders who dated their government acts from the year of the Declaration rather

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10. *America's Rule of Law* by Robert C. Cannada; published, National Lawyers Association Foundation (2001).

11. John Quincy Adams, *The Jubilee of the Constitution* (New York: Samuel Coleman, 1839), p. 54.

than the Constitution, for example: President George Washington,[12] President John Adams, [13] President Thomas Jefferson, [14] President James Madison,[15] President James Monroe,[16] President John Quincy Adams,[17] President Andrew Jackson.[18]

Alexander Hamilton concurred saying the Constitution is nothing but the body and letter of the Declaration which is its thought and spirit.[19] He added that the law was dictated by God Himself and that no human law was of any validity contrary to God's law.[20]

In a turn-of-the-century case the court held: "The latter [Constitution] is but a body and the letter of which the former [Declaration of Independence] is the thought and the spirit, and it is always safe to read the letter of the Constitution in the Spirit of the Declaration of Independence." *Gulf, Colorado and Santa Fe Railroad Co. v. Ellis*, 165 U.S. 150, 160 (1897).

November 19, 1863, President Lincoln in his Gettysburg Address officially recognized the Declaration of Independence as the beginning of this nation. Its Philosophy of Government was the reason for the bloody civil war because the government

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12. James D. Richardson, a *Compilation of the Messages and Papers of the Presidents, 1789-1897* (Authority of Congress, 1899), Vol. I P. 80, August 14, 1790.

13. Richardson, Vol. I, p. 249, July 22, 1797.

14. Richardson, Vol. I, p. 357, July 16, 1803.

15. Richardson, Valhi, p. 473, August 9, 1809.

16. Richardson, Vol.II, p. 36, April 28, 1818.

17. Richardson, Vol.II, p. 376, March 17, 1827.

18. Richardson, Vol.II, p. 440, May 11, 1829.

19. *The Federalist*, p. 275, Federalist # 49 by Alexander Hamilton.

20. Alexander Hamilton, *The Papers of Alexander Hamilton*, Harold C. Syrett, Editor (New York: Columbus University Press, 1961), Vol. I , p. 87, February 23, 1775.

of the United States, which had been formed to protect the rights declared in the Declaration, was standing by that obligation even to the point it was committing its citizens to battle and death. After reciting the provisions of the Declaration, the President stated with reference to the Declaration:

> . . . They erected a beacon to guide their children, and their children's children, [T]hey established these great self-evident truths that . . . their posterity might look up again to the Declaration of Independence and take courage to renew that battle which their fathers began, *so that truth and justice and mercy and all the humane and Christian virtues might not be extinguished from the land. . . .*[21] (Emphasis supplied)

THE DESTRUCTIVE ALTERNATIVE IN DISCLAIMING THE DECLARATION AS OUR GOVERNING DOCUMENT

The Founding Fathers set out in the Declaration of Independence absolute truths for the foundation of our government. If the Declaration of Independence has no legal significance, then the "Rule of Law" to which our government is subject would be found to be based upon human reasoning rather than that which is found in the Declaration. An ostensible "Rule of Law" predicated only upon "human reasoning" does not qualify as a rule of law. It is only a rule set by human reasoning. The "Rule of Law" established in the Declaration was predicated upon absolute truth from the Divine Mind, which does not fluctuate or change. On the other hand, man's rules are constantly adjusting according to the foibles of man's thinking, even to the point of asserting there are no absolutes and engaging in circumstantial ethics.

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21. Abraham Lincoln, The Works of Abraham Lincoln: Speeches and Debates, John H. Clifford, Editor (New York: the University Society Inc., 1908), Vol. III, pp. 126-127, August 17, 1858.

Rules that are generated by man do not recognize the absolute rules of God, and constitute the establishment of an atheistic philosophy of government, specifically contrary to that which was established in the Declaration. We are not talking about religion but the source of absolute truth as a governing basis. Once the Constitution is set adrift from the Declaration it permits the government, and particularly the courts, to proclaim "truths" that are flexible and changeable depending upon the predilection of the one making the rule.

History discloses during our own lifetime what the ultimate conclusion of that can be. The old adage that, "it can't happen here," is simply passé; we are already seeing the consequences of arbitrary rulings contrary to the standards of God which are laid down in our Declaration. As a matter of fact, talking about God is put down in today's culture as some sort of "mystical or far right" thinking. To the contrary, those that decry the reality of God are living in an imaginary world of their own making without any sense of an eternal destination. The rules of life apply also to a nation: (1) origin; (2) purpose for existing or living; (3) a foundation of moral values; (4) an ultimate destination. The alternative is an atheistic, humanistic form of government which cannot provide a foundation of "unalienable rights," and which exists without any sense of real stability, a society that creates fear in an individual and a nation.

Fifty years ago, abortion was murder and the doctor was charged for that criminal act; sodomy was a criminal act; pornography was a criminal offense; fornication was at least a misdemeanor; adultery was a criminal offense; living together without the sanction of marriage was a criminal offense; inappropriate dress or indecent exposure was at least a misdemeanor; and there was a clear demarcation between that which was considered right or wrong including the kind of language one used in public.

In today's culture we have migrated to the point that all of the foregoing is acceptable under constitutional interpretations that to hold otherwise would rob the individual of his rights or his unbridled liberty.[22] The result of that journey out of the sunlight and into the shadows is illustrated by this case in which there are two sides arguing to the court which must decide whether or not it is constitutionally appropriate to kill a living child in the process of birth.

Finding that this killing is wrong and unconstitutional on any other basis than that it violates the God-made rules of the Declaration, only dictates the problem will revisit this court in one way or another and keep this court, as Justice Scalia contends, in the "abortion umpiring business." The problem is immorality does not stand still, it only propagates greater evil. Around the corner are the moral issues of euthanasia, legal suicide, medical experimentation, "right to die" laws; and other moral issues camouflaged under the guise of "rights." The rhetoric justifying *Stenberg* could ultimately justify killing the elderly, crippled, mentally retarded, etc.

A judiciary which divorces itself from the binding absolutes contained in the Declaration, and its moral absolutes would be set adrift on a sea of unpredictability. It would operate for a period of time under the illusion of applying constitutional principles until the horrendous consequences were overwhelming. Gone would be our cherished "unalienable rights." Human rights would be totally dependent upon the State; which acronym, incidentally, has been referred to time and time again in the case law as the arbiter of our moral rights, rather than God's absolute standard of truth. Our immediate history is aflame with the potential product of "State control without God's moral conscience."

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22. Consider the shadows we are now walking in and determine realistically where it is taking us. Consider for example the case of *Lawrence v.. Texas*, 539 U.S. 558 (2003) and its aftermath and the fulfilled prophecy of Justice Scalia.

An example of the ultimate destiny of arbitrary state control unhampered by God's moral restraint can be seen in the photographs attached to this brief. (Exhibits 1-3). They demonstrate the residue of moral consequences resulting from a government by the "state" when stripped of all recognition of God and his absolute truths. The particular State government in question denied that we were *Created* by God with unalienable rights, but rather embraced the godless philosophy of evolution as coined by Darwin. It would be well to read the Nuremberg trial record and associate Justice Robert Jackson's comments and statements and review the evidence to renew in our minds the degradation to which state control can take a society. It can be a slow, incremental transition from freedom to slavery.

To the absolute contrary, our Declaration which is the moral foundation of our law, stated we were created beings, not chance accidents. In making that assertion the drafters "appeal to the Supreme Judge of the World for the rectitude of our intentions," which embodies the concept of God's moral law as earlier referred to in the Declaration, with the recognition of coming eternal judgment. For the last sixty years or more, we have been creating an atheistic society by the persistent removal of God from a viable reality in our court system, educational system, and body politic. Not being a litigating body or able to get directly involved in politics, the church has fallen prey to the big business of organizations like the ACLU, Planned Parenthood, and others of the same ilk who have made great capital off of the selfishness of man and his self-centered desires.

The result is that the vacuum has been filled with an atheistic philosophy without any counterbalance from the Word of God. We are educating our young people, for example, with the scientifically unsupported Darwin's theory of evolution as though that represented scientific truth.

The background for that teaching is the "God is dead and we have killed him" philosophy of the German atheist Frederick Nietzsche. If God is dead then the only thing left is human reason. Thus was developed the theory of positive law. Nietzsche reduced everything in life to the will for self-assertion. Since God-given values were dead, it was up to humans to create their own values.

In 1859 Charles Darwin published his book on macro-evolution, "*On the Origin of Species*." Agreeing with Darwin, Karl Marx said, "In our evolutionary concept of the universe, there is absolutely no room for either a Creator or a Ruler."[23] So parroting Darwin's philosophy of evolution and Nietzsche's nihilistic philosophy, we are educating our young people that "Now" is all we have because there is no tomorrow.

Edwards v. Aguillard, 482 U.S. 578, 579 (1987), without reference to the Declaration or its Rule of Law, the Court authorized the teaching of Darwin's philosophy of evolution, but denied the right to teach God as the Creator. Over the vigorous dissent of Justices Rehnquist and Scalia, the court found, "The act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind." Students were required to be taught a godless religion of humanism against their religious convictions, or be punished.[24]

This Court is made up of justices who are to judge both "law and fact." Your honors are not immune to evidence of what is going on in the public square. The consequences of publicly aborting our philosophy of government are all about

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23. Marx and Engles On Religion, NY:Schocken 1964, page 295.

24. Without reciting chapter and verse, the court cases are filled with people who allege her feelings for having to look at for example the Ten Commandments. A study should be made of the punishment meted out to individuals who refuse to bow the knee to the godless atheism afloat in our society.

us. The statistics available from a number of sources, demonstrate a downward spiral of morals. Since 1963 birth rates among unwed women from 15 to 19 years of age are spiraling upward, as are violent crimes, drug and alcohol use, divorce and broken families, sexually transmitted disease, sexual problems in our schools even in the grade schools, the AIDS problem (which cannot be directly dealt with concerning immoral conduct because of the "rights" of the individual), family instability; single-family households, dropping SAT scores, and the list goes on.

Is it a relevant question to ask whether or not there is a causal connection between the abandonment of God's moral standards contained in the Declaration and the moral breakdown in this nation? Is it a relevant question to ask that when the founders of this nation were confronted with an overwhelming military situation they cried out to a real God for deliverance, or at 9/11? Yet the court prevents prayer in schools, even in many cases, voluntary prayer or even carrying a Bible to school; certainly the display of the Ten Commandments affecting behavior cannot be tolerated

That rule of relativism is not only not working, it is the antithesis of the law of this land as established in our founding documents and we are paying the consequences.

CONCLUSION

The hypothetical child in a third term pregnancy situation is a person. There is no medical doubt about that conclusion. Consequently that child is entitled to the protection of a "person" under both the 14th amendment and under God's *law* contained in the Declaration of Independence. There may be some squeamishness on the part of the Court in light of the media and contemporary thinking of much of today's society in utilizing that legal terminology, but it did not result in squeamishness on the part of those who wrote the Declaration and to which they committed their lives, their fortunes, and their sacred honor.

Our society has wanted to escape from the tether of moral responsibility under God's law, and it is beginning to reap the whirlwind. This does not deal with religious epitaphs but with law that the founders determined in the Declaration was to provide a secure future for its people and progeny.

Just take the 1.29 million abortions in 2002.[25] It would be interesting to calculate how many of those pregnancies could have been prevented if the laws of 50 or 60 years ago were still in force which made it a criminal offense to engage in fornication, adultery, pornography, producing movies and TV promoting immoral sex, sadistic violence, and other conduct in this area in violation of God's moral law.

Counsel advocates this Court is at a crossroads and will determine what road of destiny this nation will take. This is an opportunity on the part of the Court to act in a very judicious and responsible manner and put the problem back in the lap of the people where it belongs and be done with the umpiring business.

The Declaration of Independence is to be the guiding law of moral conduct and responsibility based upon God's moral law and should dictate the basis for decisions out of this Court. It is contended this Court does not have either the right, or the responsibility to amend the philosophy of government translating it into an atheistic, secular and humanistic society aborting its responsibility to the Creator God of our documents.

If that is to be done, this decision should make it clear that if the people want to change the terms of the Declaration and lay a new foundation on which this government is to be built that becomes the people's responsibility, not the Court's.

The PBA Act should be held constitutional for any number of substantial legal and constitutional reasons. This

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25. Finer and Hinshaw estimates of U.S. abortion incident in 2001 and 2002, AGI (2005).

is the opportunity, however, for the Court to create the role of "freedom for the Court," and declare the Declaration of Independence to be the foundational basis for our Constitution as the philosophy of government by which we are to live as a society.

If the philosophy of government of the United States of America is to be changed, discarding the Declaration of Independence, then "people you do it."

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